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80-1370
No. ———

IN THE

Supreme Court of the United States

SUSAN LOUISE PETERSON,

Petitioner,

vs.

PAUL SORLIEN, NORMAN JUNGCLAUS, MARGARET JUNGCLAUS, KATHY MILLS, VERONICA MORGEL, and MICHELE PERKINS,

Respondents.

PETITION FOR WRIT OF CERTIORARI

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PETITION FOR WRIT OF CERTIORARI

Petitioner, Susan Louise Peterson, prays that a writ of certiorari issue to review the judgment of the Minnesota Supreme Court entered October 24, 1980, which affirmed the trial court decision. Petitioner requests that the decision of the court be reversed and that a new trial be ordered.

QUESTIONS PRESENTED

1. Whether the false imprisonment and attempted deprogramming by parents of their adult daughter violates the daughter's First and Fourteenth Amendment rights.

2. Whether a state court's abrogation of an individual's cause of action for false imprisonment because the individual momentarily acquiesces to her parents' attempts to deprogram her constitutes state action and whether that action is a deprivation of property without due process of law under the Fourteenth Amendment.

3. Whether the Court's classification of Petitioner's religion as a psuedo-religious cult which acts to absolve a tortfeasor from liability by virtue of that classification creates a suspect class on the basis of religion violating Petitioner's right to equal protection under the Fourteenth Amendment.

4. Whether the admission of evidence of a religious organization's financial support of a member's lawsuit for false imprisonment and intentional inflication of emotional distress arising out of attempts to deprogram the member is an infringement on the member's First Amendment right to freedom of expression and association.

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Respondents.

OPINIONS BELOW

The opinion of the Minnesota Supreme Court, No. 266 (1979) [Appendix A] is not yet reported.

JURISDICTION

The date of judgment and the date of entry of the decision of the Minnesota Supreme Court was October 24, 1980. This court has jurisdiction under 28 U.S.C.A. §1257(3).

CONSTITUTIONAL PROVISIONS INVOLVED

U. S. CONST. amend. I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or

of the right of the people peaceably to assemble, and to petition the government for redress of grievances.

U. S. CONST. amend. XIV §1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

White attending Moorhead State University in Moorhead, Minnesota, Petitioner became active in a religious organization called The Way Ministry. Petitioner's affiliation with the group and her abandonment of her parent's Lutheran beliefs disturbed her parents. During the spring of 1976 the parents, in an attempt to make Petitioner disassociate herself from her affiliation with the organization, arranged to have her "deprogrammed."

On May 24, 1976, at the end of her junior year of college, the Petitioner, then 21 years old (T.444), was picked up at the university by her father, defendant Norman Jungclaus, and her father's clergyman, defendant Sorlien (T.435-439). On a false pretext, Petitioner accompanied defendant Norman Jungclaus and defendant Sorlien to a house in Minneapolis where a group of deprogrammers had been assembled (T.439, 1117, 1118, 1331, 1332).

Over a period of sixteen (16) days, Petitioner was under the control of the deprogrammers, the first three (3) days of which was an intensive deprogramming session that subjected Petitioner to continual verbal ridicule and interrogation concerning her religious beliefs and her lifestyle (T.465, 1212).

Petitioner's repeated requests to be set free were ignored by her captors (T.431) At times she was physically restrained by the deprogrammers to frustrate her escape attempts (T.442, 443). She was carried kicking and screaming into the basement of the house and kept in a small room (T.430, 1532, 1533). One of her captors told Petitioner that they had lunacy papers on her and would have her committed to Anoka State Mental Hospital if she did not cooperate with the deprogramming (T.453). On one occasion, in the basement, Petitioner was caught in mid-air and was forceably put back on a bed in a spread eagle position with her arms and legs pinned down on the bed while her father tried to pry her eyes open (T.455, 489, 490). Petitioner was forced to bathe in a bathroom in the basement with a hole in the wall, which exposed her to people on the stairway (T. 459). At one point, when Petitioner pretended to fall asleep, she overheard one of the defendants explaining that what they were doing was basically using a brain washing technique, which was to fatigue her to the point of breaking down her resistance (T.451). After approximately three (3) days of deprogramming, Petitioner appeared to succumb to the deprogrammers' efforts. On the sixteenth day after the deprogramming had begun, Petitioner escaped by flagging down a Minneapolis police car (T.107-109, 525-529, 541, 542).

As a result of the deprogramming attempt, Petitioner brought an action for false imprisonment and intentional infliction of emotional distress. Named as defendants were six individuals, all of whom had differing degrees of participation in the deprogramming.

On November 9, 1977, Petitioner served a Motion and Notice of Motion on the defendants to exclude from the trial references to religious "cults" and that Petitioner's attorneys' fees and expenses were being paid by or shared by The Way Ministry [Appendix B]. Petitioner argued that evidence about religious "cults" or about her religious practices was (1) not relevant to the legal issues of the case; (2) that the jury would be prejudiced by beliefs and practices incomprehensible to them; and (3) that the evidence would have a chilling effect on Petitioner's associational rights. Likewise, evidence of the payment of attorneys' fees was argued to be (1) irrelevant; (2) prejudicial; and (3) that it would restrict the free exercise of legal rights and invite religious prejudice. These motions, along with Petitioner's motion to strike defendants' real party in interest defense, were not granted.

The case was called for trial on November 14, 1977 and resulted in (1) a directed verdict in favor of defendant Sorlien on both torts; (2) a jury finding of no false imprisonment; and (3) a jury finding of intentional infliction of emotional distress against three defendants with a total of $10,000.00 punitive damages against two of them. Throughout the course of the trial, evidence was introduced about religious cults and on the particular practices of Petitioner's religion. In addition to Petitioner's objections being overruled, she was not allowed to

call three witnesses to rebut the prejudicial evidence. Evidence was also introduced that Petitioner's religious organization was assisting in the legal fees of her suit.

Petitioner appealed to the Minnesota Supreme Court asserting that the trial court erred by (1) failing to grant a judgment notwithstanding the verdict on the claim of false imprisonment; (2) permitting the admission of evidence concerning her involvement in The Way Ministry and its activities; (3) instructing the jury that, in assessing Petitioner's credibility and damages, it could consider whether others than herself were participating in the expenses of the litigation; (4) directing a verdict for defendant Sorlien; and (5) denying her motion to amend the complaint to substitute the proper names for defendants previously identified as James Roe, John Doe, Mary Roe and Jane Doe and to add a new cause of action.

The Minnesota Supreme Court, in disposing of Petitioner's claim, entered into an analysis of not only the phenomenon of youth-oriented religious groups, but of its perceptions of Petitioner's particular religious practices. Although the Court stated in its opinion that it would use the term "cult" in the dictionary rather than perjorative sense, throughout the opinion it equates Petitioner's religion with such provocative phrases as "psychological kidnapping," "mind control," and "coercive persuasion." In arriving at a decision, the Minnesota Supreme Court embraces the very considerations that the Petitioner argued violated her constitutional rights. As noted in the dissenting opinion of Justice Wahl, the Court's analysis "beclouded the purely legal issues of the case."

The first issue confronted by the Court was the jury instruction:

> an informed and reasoned consent is a defense to an allegation of false imprisonment and that a nonconsensual detention could be deemed consensual if one's behavior so indicated, exonerating defendants with respect to the false imprisonment claim.

On this issue the Court held:

> when parents, or their agents, acting under the conviction that the judgmental capacity of their adult child is impaired, seek to extricate that child from what they believe to be a religious or psuedo-religious cult, and the child at some juncture assents to the actions in question, limitations upon the child's mobility do not constitute meaningful deprivations of personal liberty sufficient to support a judgment for false imprisonment.

Petitioner contends that the Minnesota Court has arrived at this holding by not only a misinterpretation of the facts, but by a misapplication of the case law. In addition, the opinion sets a dangerous precedent with respect to federally protected constitutional rights.

The second issue addressed by the Court was the propriety of admissions of evidence regarding the Petitioner's involvement in the activities of The Way Ministry. With respect to this issue the Court held:

> in an action for intentional infliction of emotional distress, when the record discloses no testimony impinging upon religious belief, the introduction by defendants of relevant evidence concerning matters that plaintiff voluntarily placed in issue, such as her religious association and defendants' state of mind, was admissible and did not violate the First Amendment admonition respecting freedom of religion.

Petitioner argues that her religious practices were not put in issue and that the admission of that evidence improperly shifted the jury's attention from the merits of the case to the acceptability of Petitioner's religious beliefs.

Finally, was the trial court's instruction that when assessing Petitioner's credibility and damages, they could properly take into account whether The Way Ministry was maintaining or financing the lawsuit. The court held:

> although we find that the trial court may have erred in instructing that the jury could consider evidence of the cult's financial support in assessing plaintiff's credibility, because the instruction constituted a small part of an otherwise commendable exposition and did not affect the ultimate disposition of the case as evidenced by the award of $10,000 in punitive damages, we hold that the commission of the error, if any, does not merit reversal.

Petitioner believes that the introduction of such evidence compromised her federally protected rights to such a degree as to necessitate reversal of the State Court's decision.

By this petition, the Petitioner is seeking a review of the Minnesota Supreme Court's decision, reversal of that decision and the granting of a new trial.

REASONS FOR GRANTING THE WRIT

The modern day phenomenon of parents kidnapping their children and attempting to deprogram them from what they believe to be a religious cult has become commonplace. Deprogramming takes place despite the fact that the very concept is irreconcilable with such basic tenets of American society as personal liberty and freedom of religion. The failure to adequately protect feder-

al constitutional rights of individuals subjected to deprogramming is manifest by the divergent opinions of federal and state courts alike. See, *Weiss v. Patrick,* 453 F. Supp. 717 (D.R.I.), *aff'd,* 588 F.2d 818 (1st Cir. 1978), *cert. denied,* 442 U.S. 929 (1979); *Augenti v. Cappellini,* 84 F.R.D. 73 (M.D. Pa. 1979); *Baer v. Baer,* 450 F. Supp. 481 (1978); *Rankin v. Howard,* 457 F. Supp. 70 (D. Ariz. 1978); *Mandelkorn v. Patrick,* 359 F. Supp. 692 (D.D.C. 1973).

Until this Court clearly expresses a standard which delineates the point, if any, at which society may intervene, freedom of religion for members of minority or unpopular religious groups is chilled. The mere assertion by individuals that they believe another to be a member of a religious cult will justify the deprivation of First and Fourteenth Amendment rights with impunity.

The Minnesota Supreme Court, like so many other courts, has added to the confusion of this unsettled area of law. Its decision has failed to adequately redress violations to the Petitioner's federal constitutional rights. The rule enunciated by the court in effect encourages the use of the most oppressive and intensive deprogramming techniques. Deprogrammers, to insure their immunity from tort liability, must succeed in making the individual ostensibly recant his religion. Those religious believers who remain steadfast in their religious beliefs will only invite continued intensified efforts by the deprogrammers.

Although the parents have the right that all citizens have to peaceably dissuade Petitioner of her religious views, those rights cannot be exercised at the expense of Petitioner's rights. The rule established by the Minnesota court balances these conflicting rights not on their mer-

its, but creates a presumption that the parents' rights are superior. The rule states that if the parents believe, whether the belief be well-founded, ill-founded, or unfounded, that their child is a member of a religious cult and subsequent efforts at deprogramming at some point appear to be successful, then that child has not significantly been deprived of its personal liberty or religious freedom. This rule makes the deprogrammer's success rather than the merits of the conflicting rights controlling. This rule invites and encourages the deprivation of constitutional rights by destroying any cause of action the deprogrammee may have. Clearly, the balance between conflicting constitutional rights must be based on the merits of the rights themselves and should not be augmented by the abrogation of the religious believer's cause of action if she should momentarily acquiesce to deprogramming efforts. It is solely within the power of this Court to strike the appropriate balance and to establish an appropriate test.

Petitioner has a vested right to petition the courts for the redress of grievances. The rule created by the Minnesota Court deprives Petitioner of her cause of action for false imprisonment. Because she had appeared to acquiesce in the deprogramming, she is barred from recovering. The parents' actions violated Petitioner's constitutional rights and the Minnesota Court deprives her of a cause of action without due process of law by facilitating violations of those rights. Creation of a rule abrogating the cause of action may constitute unconstitutional state action. *Barrows v. Jackson,* 346 U.S. 249 (1953); *N.A.A.C.P. v. Alabama,* 387 U.S. 449 (1953).

Finally, the Minnesota Supreme Court inappropriately enters into an analysis of the relative merits of Petitioner's religious practices. *Presbyterian Church v. Hall Church,* 393 U.S. 440 (1969). The Court classifies Petitioner's religion as a psuedo-religious cult and then justifies the defendants' tortious conduct on the basis of that classification. The defendants' belief that Petitioner is a member of psuedo-religious cult, and the Court's acceptance of that classification, justifies the false imprisonment. Only a decision by this Court can negate such an unconstitutional classification and insure that members of unpopular minority religions receive equal protection under the Fourteenth Amendment.

This Court has encouraged the participation of an organization in the legal expenses of a party seeking to vindicate its civil rights. *N.A.A.C.P. v. Button,* 371 U.S. 415 (1963). In the present case, Petitioner sought the protection of the law from those who violated rights scrupulously protected by the First Amendment. The error in instructing that the jury could consider evidence of the religious organization's participation in Petitioner's legal fees was inherently prejudicial and unconstitutional. This Court can insure the free exercise of legal rights and negate religious prejudice by a determination that the con-

sideration of such evidence in this case was unconstitutional.

Respectfully submitted,

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APPENDIX A

Hennepin County

Susan Louise Peterson,

Appellant,

vs. 48721

Paul Sorlien,

Respondent,

Norman Jungclause, et al,

Respondents,

Michele Perkings,

Respondent.

Sheran, C. J.
Concurring Specially, Peterson, J.
Dissenting, Otis J and Wahl, J.
Took no part, Amdahl, J.
and Simonett, J.
Endorsed,
Filed October 24, 1980,
John McCarthy, Clerk
Minnesota Supreme Court

No. 266 (1979)

SYLLABUS

In an action by an adult against her parents and others for false imprisonment and intentional infliction of emotional distress it is held:

1. The evidence does not establish liability of parents for false imprisonment as a matter of law;

2. Admission of evidence to show that defendants acted in the good faith belief that plaintiff had been subject to psychological duress by a religious group or sect was not error when plaintiff was claiming punitive damages;

3. Instruction that jury, in assessing plaintiff's credibility, could consider whether the litigation was supported financially by the religious group or sect which, according to defendants, had subjected plaintiff to psychological duress was not reversible error under the facts of this case;

4. The trial court properly directed a verdict in favor of a defendant whose contacts with the alleged false imprisonment and emotional distress were inconsequential; and

5. Refusal of trial court to permit amendment of complaint at outset of trial was not reversible error.

Affirmed.

Heared before Sheran, C. J., Otis, Peterson, Kelly, Todd Yetka and Maxwell, JJ. and considered and decided by the court en banc.

OPINION

SHERAN, Chief Justice.

This action by plaintiff Susan Jungclaus Peterson for false imprisionment and intentional infliction of emotional

distress arises from an effort by her parents, in conjunction with other individuals named as defendants, to prompt her disaffiliation from an organization known as The Way Ministry.

At trial, the Hennepin County District Court directed a verdict in favor of defendant Paul Sorlien, plaintiff's former minister, finding the evidence proferred against him insufficient as a matter of law. The jury returned a verdict exonerating Mr. and Mrs. Jungclaus and the other remaining defendants of the charge of false imprisonment; however, the jury found defendants Veronica Morgel and Kathy Mills liable for intentional infliction of emotional distress, assessing against each of them $1 compensatory damages and $4,000 and $6,000 respectively as punitive damages.

Plaintiff asserts that the trial court erred by 1) failing to grant a judgment notwithstanding the verdict on the claim of false imprisonment; 2) permitting the admission of evidence concerning her involvement in The Way and its activities; 3) instructing the jury that in assessing plaintiff's credibility it could consider whether others than plaintiff were participating in the expense of the litigation; 4) directing a verdict in favor of Paul Sorlien; and 5) denying her motion to amend the complaint to substitute the proper names of defendants previously identified as John Doe, James Roe, Jane Doe and Mary Roe and to add a new cause of action.

We find that if the trial court erred in its jury instruction which outlined the factors that could be considered in assessing plaintiff's credibility and by failing to permit the substitution of proper names for defendants otherwise

identified in the complaint, these errors were not of a fundamental magnitude. In all other respects, we affirm the determination of the district court.

Viewing the evidence in the light most favorable to the prevailing defendants, this case marks the emergence of a new cultural phenomenon: youth-oriented religious or psuedo-religious groups which utilize the techniques of what has been termed "coercive persuasion" or "mind control" to cultivate an uncritical and devoted following. Commentators have used the term "coercive persuasion," originally coined to identify the experience of American prisioners of war during the Korean conflict to describe the cult-induction process. The word "cult" is not used pejoratively but in its dictionary sense to describe an unorthodox system of belief characterized by "[g]reat or excessive devotion or dedication to some person, idea, or thing." *Webster's New International Dictionary of the English Language Unabridged* 552 (1976). Coercive persuasion is fostered through the creation of a controlled environment that heightens the susceptibility of a subject to suggestion and manipulation through sensory deprivation, physiological depletion, cognitive dissonance, peer pressure, and a clear assertion of authority and dominion. The aftermath of indoctrination is a severe impairment of automony and the ability to think independently, which induces a subject's unyielding compliance and the rapture of past connections, affliations and associations. *See generally* Delgado, *Religious Totalism: Gentle and Ungentle Persuasion under the First Amendment*, 51 S. Cal. L. Rev. 1 (1977). One psychologist characterized the process of cult indoctrination as "psychological kidnapping." *Id* at 23.

At the time of the events in question, Susan Jungclaus Peterson was 21 years old. For most of her life, she lived with her family on a farm near Bird Island, Minesota. In 1973, she graduated with honors from highschool, ranking second in her class. She matriculated that fall at Moorhead State College. A dean's list student during her first year, her academic performance declined and her interests narrowed after she joined the local chapter of a group organized internationally and identified locally as The Way of Minnesota, Inc.

The operation of The Way is predicated on the fundraising activities of its members. The Way's fundraising strategy centers upon the sale of pre-recorded learning programs. Members are instructed to elicit the interest of a group of ten or twelve people and then play for them, at a charge of $85 per participant, a taped introductory course produced by The Way International. Advanced tape courses are then offered to the participants at additional cost, and training sessions are conducted to more fully acquaint recruits with the orientation of the group and the obligations of membership. Recruits must contribute a minimum of 10 percent of their earnings to the organization; to meet the tithe, student members are expected to obtain part-time employment. Members are also required to purchase books and other materials published by the ministry, and are encouraged to make larger financial contributions and to engage in more sustained efforts at solicitation.

By the end of her freshman year, Susan was devoting many hours to The Way, listening to instructional tapes, soliciting new members and assisting in training sessions.

As her sophomore year began, Susan committed herself significantly, selling the car her father had given her and working part-time as a waitress to finance her contributions to The Way. Susan spent the following summer in South Dakota, living in conditions described as appalling and overcrowded, while recruiting, raising money and conducting training sessions for The Way.

As her jurior year in college drew to a close, the Jungclauses grew increasingly alarmed by the personality changes they witnessed in their daughter; overly tired, unusally pale, distraught and irritable, she exhibited an increasing alienation from family, diminished interest in education and decline in academic performance. The Jungclauses, versed in the literature of youth cults and based on conversations with former members of The Way, concluded that through a calculated process of manipulation and exploitation Susan had been reduced to a condition of psychological bondage.

On May 24, 1976, defendant Norman Jungclaus, father of plaintiff, arrived at Moorhead to pick up Susan following the end of the third college quarter. Instead of returning to their family home defendant drove with Susan to Minneapolis to the home of Veronica Morgel. Entering the home of Mrs. Morgel, Susan was greeted by Kathy Mills and several young people who wished to discuss Susan's involvement in the ministry. Each of those present had been in some way touched by the cult phenomenon. Kathy Mills, the leader of the goup, had treated a number of former cult members, including Veronica Morgel's son. It was Kathy Mills a self-styled professional deprogrammer, to whom the Jungclauses turned, and

intermittently for the next sixteen days, it was in the home of Veronica Morgel that Susan stayed.

The avowed purpose of deprogramming is to break the hold of the cult over the individual through reason and confrontation. Initially, Susan was unwilling to discuss her involvement; she lay curled in a fetal position, in the downstairs bedroom where she first stayed, plugging her ears and crying while her father pleaded with her to listen to what was being said. This behavior persisted for two days during which she intermittently engaged in conversation, at one point screaming hysterically and flailing at her father. But by Wednesday Susan's demeanor had changed completely; she was friendly and vivacious and that night slept in an upstairs bedroom. Susan spent all day Thursday reading and conversing with her father and on Saturday night went roller-skating. On Sunday she played softball at a nearby park, afterwards enjoying a picnic lunch. The next week Susan spent in Columbus, Ohio, flying there with a former cult member who had shared with her the experiences of the previous week. While in Columbus, she spoke every day by telephone to her fiancee who, playing tapes and songs from the ministry's headquarters in Minneapolis, begged that she return to the fold. Susan expressed the desire to extricate her fiancee from the dominion of the cult.

Susan returned to Minneapolis on June 9. Unable to arrange a controlled meeting so that Susan could see her fiancee outside the presence of other members of the ministry, her parents asked that she sign an agreement releasing them from liability for their past weeks' actions. Refusing to do so, Susan stepped outside the Morgal residence with the puppy she had purchased in Ohio, mo-

tioned to a passing police car and shortly thereafter was reunited with her fiancee in the Minneapolis headquarters of The Way. Following her return to the ministry, she was directed to counsel and initiated the present action.

1. Plaintiff seeks a judgment notwithstanding the verdict on the issue of false imprisonment, alleging that defendants unlawfully interfered with her personal liberty by words or acts which induced a reasonable apprehension that force would be used against her if she did not otherwise comply. *Durgin v. Cohen,* 168 Minn. 77, 209 N.W. 532 (1926). The jury, instructed that an informed and reasoned consent is a defense to an allegation of false imprisonment and that a nonconsensual detention could be deemed consensual if one's behavior so indicated, exonerated defendants with respect to the false imprisonment claim.

The period in question began on Monday, May 24, 1976, and ceased on Wednesday, June 9, 1976, a period of 16 days. The record clearly demonstrates that Susan willingly remained in the company of defendants for at least 13 of those days. During that time she took many excursions into the public sphere, playing softball and picnicking in a city park, rollerskating at a public rink, flying aboard public aircraft and shopping and swimming while relaxing in Ohio. Had Susan desired, manifold opportunities existed for her to alert the authorities of her allegedly unlawful detention; in Minneapolis, two police officers observed at close range the softball game in which she engaged; enroute to Ohio, she passed through the security areas of the Twin Cities and Columbus airports in the presence of security guards and uniformed police; in

Columbus she transacted business at a bank, went for walks in solitude and was interviewed by an F.B.I. agent who sought assurances of her safety. At no time during the 13-day period did she complain of her treatment or suggest that defendants were holding her against her will. If one is aware of a reasonable means of escape that does not present a danger of bodily or material harm, a restriction is not total and complete and does not constitute unlawful imprisonment. Damages may not be assessed for any period of detention to which one freely consents. *See Davis & Allcott Co. v. Boozer,* 215 Ala. 116, 110 So. 28 (1926); *Restatement (Second) of Torts* § 36, Comment a (1965); 4 *Minnesota Practice JIG II,* 504 G-S (2d ed. 1974).

In his summation to the jury, the trial judge instructed that to deem consent a defense to the charge of false imprisonment for the entire period or for any part therein, a preponderance of the evidence must demonstrate that such plaintiff voluntarily consented. The central issue for the jury, then, was whether Susan voluntarily participated in the activities of the first three days. The jury concluded that her behavior constituted a waiver.

We believe the determination to have been consistent with the evidence. *See Faniel v. Chesapeake & Potomac Telephone Co.,* 404 A.2d 147 (D.C. 1979); *Schneckloth v. Bustamonte,* 412 U.S. 218 (1973); F. Harper & F. James, *The Law of Torts* § 3.10, at 235 (1956). Were the relationship other than that of parent and child, the consent would have less significance.

To determine whether the findings of the jury can be supported upon review, the behavior Susan manifested during the initial three days at issue must be considered

in light of her actions in the remainder of the period. Because, it is argued, the cult conditioning process induces dramatic and non-consensual change giving rise to a new temporary identity on the part of the individuals whose consent is under examination, Susan's volitional capacity prior to treatment may well have been impaired. Following her readjustment, the evidence suggests that Susan was a different person, "like her old self." As such, the question of Susan's consent becomes a function of time. We therefore deem Susan's subsequent affirmation of defendants' actions dispositive.

In *Weiss v. Patrick*, 453 F. Supp. 717 (D.R.I.), *aff'd*, 588 F.2d 818 (1st Cir. 1978), *cert. denied*, 442 U.S. 929 (1979), the federal district court in Rhode Island confronted a situation similar to that which faces us. Plaintiff, a devotee of the Unification Church, brought an action for false imprisonment against individuals hired by her parents to prompt her disassociation from the church. Because plaintiff's mother was dying of cancer, the church authorities permitted her to join her family for the Thanksgiving holiday. Met at the airport by her mother, she testified that she was restrained against her will in the home of one of the defendants and subjected to vituperative attacks against the church until she seized an opportunity to flee. Despite the evidently traumatic experience sustained by plaintiff, the district court found that she failed to demonstrate a meaningful deprivation of personal liberty, reasoning that "any limitation upon personal mobility was not her primary concern." *Id.* at 722. In so reasoning, the court underscored a parental right to advocate freely a point of view to one's child, "be

she minor or adult." To assure freedom, the court observed, "the right of every person 'to be left alone' must be placed in the scales with the right of others to communicate." *Id.* (quoting *Rowan v. United States Post Office Department*, 397 U.S. 728, 736 (1970)).

In light of our examination of the record and rules of construction providing that upon review the evidence must be viewed in a manner most favorable to the prevailing party, *Kuehl v. National Tea Co.*, 310 Minn. 48, 245 N.W. 2d 235 (1976), we find that a reasonable basis existed for the verdict exonerating defendants of the charge of false imprisonment. Although carried out under colorably religious auspices, the method of cult indoctrination, viewed in a light most favorable to the prevailing party, is predicated on a strategy of coercive persuasion that undermines the capacity for informed consent. While we acknowledge that other social institutions may utilize a degree of coercion in promoting their objectives, none do so to the same extent or intend the same consequences. Society, therefore, has a compelling interest favoring intervention. The facts in this case support the conclusion that plaintiff only regained her volitional capacity to consent after engaging in the first three days of the deprogramming process. As such, we hold that when parents, or their agents, acting under the conviction that the judgmental capacity of their adult child is impaired, seek to extricate that child from what they reasonably believe to be a religious or psuedo-religious cult, and the child at some juncture assents to the actions in question, limitations upon the child's mobility do not constitute meaningful deprivations of personal liberty sufficient to support a

judgment for false imprisonment.[1] But owing to the threat that deprogramming poses to public order, we do not endorse self-help as a preferred alternative. In fashioning a remedy, the First Amendment requires resort to the least restrictive alternative so as to not impinge upon religious belief. *Cantwell v. Connecticut,* 310 U.S. 296 (1940).[2]

2. On appeal, plaintiff challenges the propriety of admissions by the trial court of evidence regarding her involvement in the activities of The Way. By charging defendants with intentional infliction of emotional distress and seeking punitive damages, plaintiff placed the state of mind of defendants at issue. For a court to award punitive damages, a plaintiff must prove that defendants acted willfully, wantonly and maliciously. Good faith is a proper defense to punitive damages, even though defendants might have been mistaken in their belief that a party was in jeopardy or that their actions were correct. *Benson Cooperative Creamery Association v. First District Association,* 276 Minn. 520, 151 N.W.2d 422 (1967). Therefore, in determining whether defendants acted with the requisite degree of malice, the trial court considered defendants' perceptions of The Way Ministry and their fears for Susan's well-being relevant and admissible.

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[1]Plaintiff in her motion for a judgment notwithstanding the verdict stated that she wished to recover only nominal damages against her parents. This court has held that a judgment for defendant will not be reversed on appeal simply to allow a plaintiff to recover nominal damages. *Erickson v. Midland Nat'l Bank & Trust Co.,* 205 Minn. 224, 285 N.W. 611 (1939).

[2]While we decline at this time to suggest a particular alternative, we observe that some courts have permitted the creation of temporary guardianships to allow the removal of cult members to therapeutic settings. If the individuals desire, at the end of the conservatorship they may return to the cult. Actions have also been initiated against cult leaders on the basis of criminal liability. *See generally* Delgado, *supra,* at 73-97.

The ability of defendants to introduce testimony of their perception of the ministry's effect upon plaintiff must be weighed against the First Amendment admonition respecting the free exercise of religion. Although religious belief is protected absolutely from governmental regulation, religiously motivated conduct is subject to a balancing test that weighs the interest of the religious group against the state's interest in regulating or forbidding the activity. *Wisconsin v. Yoder,* 406 U.S. 205 (1972); *Sherbert v. Verner,* 374 U.S. 398 (1963). A court may also afford the interest of the religious group less weight if it considers the belief giving rise to the conduct insincerely held, or if the practice is not central to the group's system of belief. *Id.*

At trial, defendants did not act as inquisitors, seeking to admit testimony regarding plaintiff's religious beliefs, but merely tried to show that their fears for Susan's physical and emotional well-being were well-grounded. To assess defendants' state of mind, the trial court admitted evidence purporting to illustrate defendants' fear that The Way's method of recruitment resembled a process of programmed manipulation devised to allay the suspicions and anethesize the rational processes of its targets. Publication by The Way of a guide on "The 'How' of Door to Door Witnessing," instructing recruiters to focus on "the hungry" and on "individuals whose resistance is temporarily lowered because of loneliness, worry over exams, or other adolescent crises," suggests that a reasonable basis for defendants' fears did indeed exist. The court therefore permitted references to Susan's physchological and physical condition, the extent and manner of her participation in the program of the cult, the demands of mem-

bership, and her living conditions during the summer that she "witnessed" for the cult.

The admission of evidence for the purpose of showing good faith may have the unintended effect of prejudicing a jury by bringing out facts regarding religious belief. Aware of the potential impact of such testimony, the trial judge instructed the jury on no fewer than six occasions as to the purpose of the evidence and the context in which it could be considered and upheld objections to testimony bearing on religious belief. Since an award of punitive damages rests with the discretion of the jury, *Nelson v. Halvorson,* 117 Minn. 255, 135 N.W. 818 (1912), to have excluded all evidence bearing a potentially prejudicial impact would have eviscerated defendants' right to defend against the charge of intentional infliction of emotional distress. We therefore find that in an action for intentional infliction of emotional distress. when the record discloses no testimony impinging upon religious belief, the introduction by defendants of relevant evidence concerning matters that plaintiff voluntarily placed in issue, such as her religious association and defendants' state of mind, was admissible and did not violate the First Amendment admonition respecting freedom of religion.

3. Plaintiff next challenges a charge to the jury by the trial judge instructing that when assessing plaintiff's credibility, the jury could properly take into account whether The Way was maintaining or financing the law suit. Plaintiff argues that the instruction, culminating after a lengthy trial involving several causes of action, extensive discovery proceedings, a plethora of motions and a number of hearings, constituted reversible error.

In the past, this court has observed that a trial court's charge to the jury must be reviewed in its entirety, interpreting the instructions as a whole and refraining from considering isolated statements without reference to context. *Thomas v. Mueller*, 251 Minn. 470, 88 N.W.2d 842 (1958); *Lund v. Minneapolis Street Ry.*, 250 Minn. 550, 86 N.W.2d 78 (1957). At trial, reference was made to whether plaintiff was the real party in interest or merely a conduit through which other parties were maintaining the action. As a matter of law, the court ruled that defense inadmissible, subsequently instructing that such facts could only be considered in determining plaintiff's credibility and ascertaining appropriate damages. In otherwise instructing the jury, the trial court clearly and accurately described the torts of false imprisonment and intentional infliction of emotional distress and ruled as a matter of law that certain defenses asserted by defendants were inapplicable. The trial court also informed the jury that evidence implicating The Way could only be considered in the limited context of establishing whether defendants acted wantonly, willfully or maliciously; that inquiry, in turn, related only to the assessment of punitive damages and not to the ultimate questions of liability.

In general we believe it unwise to sanction a jury instruction providing that when a group supports a plaintiff or derives a benefit therefrom, evidence of such support can be introduced at trial relative to the question of damages. The ultimate effect of such a ruling might deter litigants from accepting the assistance of unpopular groups fearing that this evidence could affect the disposition of a case. In *NAACP v. Button*, 371 U.S. 415 (1963), the United States Supreme Court held such relationships to be

modes of expression and association protected under the First Amendment. *Button* concerned the NAACP's practice of advising individuals during informational meetings of its willingness to commence civil rights litigation on their behalf. Challenged under a statute forbidding solicitation of legal business by an organization that retains a lawyer in connection with an action to which it is neither a party nor has a pecuniary right or liability, the United States Supreme Court found the statute unconstitutional.

The purpose of a jury instruction is to convey a clear and correct understanding of the law of the case as it relates to all the parties involved. A charge that is substantially correct is sufficient when an error has not been given such undue prominence as to obscure issues of primary significance. *St. George v. Lollis,* 209 Minn. 322, 296 N.W. 523 (1941); *See Gibbon Farmers Elevator Co. v. Herschmann,* 160 Minn. 326, 200 N.W. 293 (1924). Therefore, although we find that the trial court may have erred in instructing that the jury could consider evidence of the cult's financial support in assessing plaintiff's credibility, because the instruction constituted a small part of an otherwise commendable exposition and did not affect the ultimate disposition of the case as evidenced by the award of $10,000 in punitive damages, we hold that the commission of the error, if any, does not merit reversal.

4. Plaintiff further challenges the decision of the trial court, charging that the court erred by directing a verdict in favor of the plaintiff's former minister, Paul Sorlien. In so doing, plaintiff attributes to Paul Sorlien a degree of participation in the events in question that bears no relation to the actual facts of the case.

The active involvement of Paul Sorlien began when he accompanied his parishioner, Norman Jungclaus, to Moorhead, Minnesota to pick Susan up at the close of her examinations and then drove them to Minneapolis to the home of Veronica Morgel. Sorlien had become concerned about Susan following conversations with her parents and was previously acquainted with Morgel by reason of an informational seminar that they both attended on the subject of religious cults. The trio arrived at the Morgel residence at approximately 7 p.m. at which time Sorlien was called away to assist a parishioner who had been transferred unexpectedly to a Minneapolis hospital. Sorlien returned at approximately 11 p.m. and consequently was unaware of the circumstances surrounding Susan's removal to the downstairs bedroom. Susan became hysterical when he walked downstairs to greet her, and he therefore immediately left the room. The next day Sorlien again entered the room and observed Susan curled up in a fetal position with her fingers in her ears. Upon seeing him, Susan once again became hysterical. Sorlien attributed her hysterical reactions to her indoctrination by The Way that ministers are "adversary, part of the devil." Sorlien spent the remainder of the day visiting three parishioners in three different metropolitan hospitals. On Wednesday, Sorlien was present but not party to a conversation between Susan and another individual but later that afternoon Sorlien exchanged pleasantries with Susan and noticed that her appearance and demeanor were markedly different. On Thursday, he returned to Bird Island to make funeral arrangements for a parishioner and to teach a confirmation class. He had no other significant contracts or conversations with the Jungclauses or Susan following his departure.

Under the applicable standard recently reiterated in *J. N. Sullivan & Associates, Inc. v. C. D. Chapman Construction Co.*, 304 Minn. 334, 231 N.W.2d 87 (1975), we find the evidence against Paul Sorlien insufficient to present a question of fact for the jury to decide, and accordingly, uphold the directed verdict of the trial court.[3]

5. As a final matter, plaintiff appeals the denial by the trial court of her motion to amend the complaint for the purpose of substituting the proper names of those previously identified in the complaint as John Doe, James Roe, Jane Doe and Mary Roe. Also included in the above motion was the further request to include an additional cause of action for civil conspiracy under 42 U.S.C. § 1985 (1976).[4]

Minn. R. Civ. P. 9.08 provides that when a litigant in his pleadings alleges ignorance as to the name of an opposing party, the opposing party may be designated by any name; after discovery of the true name, the pleadings may be amended accordingly. By identifying the parties in such manner, defendants are on notice that the complaint will be amended. Because of the perfunctory na-

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[3]At trial, plaintiff sought the production of personal correspondence between Sorlien and his bishop. The trial court denied discovery ruling that the documents sought were not reasonably calculated to lead to relevant evidence under Minn. R. Civ. P. 26.02(1). On appeal, plaintiff argues that the trial court's failure to permit discovery was mistakenly based on Minn. Stat. § 595.02, subd. 3 (1978), imposing a clergyman-penitent privilege, which plaintiff argued was not relevant to the facts of the case. While we disagree with plaintiff's characterization of the ruling of the trial court, because we deem the directed verdict proper, the issue is moot.

[4]In respect to § 1985, a federal district court recently held that where defendant was motivated by paternal concerns for a plaintiff's health and well-being and not from the abhorence of plaintiff's religious views, plaintiff failed to establish the existence of a class-based animus necessary to allege a violation under 42 U.S.C. § 1985 (1976). *Weiss v. Patrick*, 453 F. Supp. 717 (D.R.I.), *aff'd*, 588 F.2d 818 (1st Cir. 1978), *cert denied*, 442 U.S. 929 (1979).

ture of the rule, we conclude that the trial court erred by failing to permit the substitution. *See LaSalle Cartage Co. v. Johnson Brothers Wholesale Liquor Co.*, 302 Minn. 351, 225 N.W.2d 233 (1974). In respect to that part of the motion seeking the addition of a new federal cause of action, however, we find the trial court did not err. The addition of a new cause of action almost a year after commencement of the suit would have likely delayed the start of trial or prejudiced the adverse party. Leave to amend will only be granted when justice so requires. Minn. R. Civ. P. 15.01.

Neither in her brief nor in her notice of appeal does plaintiff indicate what relief she seeks as a result of this error. Because plaintiff only sought punitive damages of $10,000, for which she had already been compensated, the substitution of the remaining defendants would only have resulted in a symbolic award. Hence, under Minnesota's harmless error rule, the refusal of the trial court to take such action did not appear to affect the substantial rights of the parties. Minn. R. Civ. P. 61. We therefore hold that the failure of the trial court to permit the substitution of the true and correct name of a party joined in a complaint by a fictitious name does not constitute reversible error when doing so would have resulted only in a symbolic award.

Affirmed.

PETERSON, J. (concurring specially).

I concur in the result.

AMDAHL, J. and SIMONETT, J., not having been members of this court at the time of the argument and

submission, took no part in the consideration or decision of this case.

WAHL, Justice (dissenting in part, concurring in part).

I must respectfully dissent. In every generation, parents have viewed their children's religious and political beliefs with alarm and dismay if those beliefs were different from their own. Under the First Amendment, however, adults in our society enjoy freedoms of association and belief. In my view, it is unwise to tamper with those freedoms and with longstanding principles of tort law out of sympathy for parents seeking to help their "misguided" offspring, however well-intentioned and loving their acts may be. Whether or not, as the majority opinion asserts, The Way of Minnesota, Inc. is a "youth-oriented," "pseudo-religious group" which pursues its "fundraising strategy" in such a way as to inflict physical and psychological harm on its members, emphasis on this characterization beclouds the purely legal issues which are presented by this appeal.

The first of those legal issues is whether, as a matter of law, any of the defendants in this case are guilty of false imprisonment of the plaintiff. The elements of the tort of false imprisonment are (1) words or acts by defendant intended to confine plaintiff, (2) actual confinement, and (3) awareness by plaintiff that she is being confined. *Blaz v. Molin Concrete Products Co.*, 309 Minn. 382, 244 N.W.2d 277 (1976). Any imprisonment "which is not legally justifiable" is false imprisonment, *Kleidon v. Glascock*, 215 Minn. 417, 10 N.W.2d 394 (1943); therefore, the fact that the tortfeasor acted in good faith is no defense to a charge of false imprisonment. *Accord, Strong*

v. City of Milwaukee, 38 Wis.2d 564, 157 N.W.2d 619 (1968). Thus, although the majority opinion correctly concludes that evidence concerning the activities of The Way and the impact of those activities upon plaintiff may have been relevant to the question of whether defendants acted so willfully and maliciously as to justify an award of punitive damages, such evidence has little bearing on the issue of defendants' liability for false imprisonment.

The unrebutted evidence shows that defendant Norman Jungclaus, the father of the 21-year-old plaintiff in this case, took his adult daughter, kicking and screaming, to a small bedroom in the basement of the Morgel home on Monday, May 23. Norman Jungclaus admitted that she did not go with him willingly. Plaintiff curled up on the bed, plugged her ears, and cried. Defendant Perkins testified that plaintiff screamed and cried and pleaded with several people to let her go, but her pleas were ignored. This situation continued until 3 a.m. Tuesday. At one point that morning, plaintiff flew at her father, and he held her arms around her from the back, in his words, "for maybe a half an hour, until she calmed down again." Plaintiff testified that Defendant Mills told her papers had been drafted to commit her to Anoka State Hospital if she continued to refuse to cooperate with the "deprogramming."

In its memorandum accompanying the order denying plaintiff's motion for judgment notwithstanding the verdict, the trial court stated:

> It should be noted that there must be considerable room for doubt concerning that portion of the verdict finding that Norman Jungclaus did not partici-

> pate in a false imprisonment. The evidence is unrebutted that he picked up his 21-year-old daughter Susan and took her into the basement without her permission or consent, and against her will. She remained there several days. However, Plaintiff stated that she was not seeking compensatory damages against her parents, and only $1.00 in punitive damages.
>
> In that light, judgment notwithstanding verdict as to false imprisonment would be of no significance in the matter of compensatory damages. And whether or not Mr. Jungclaus's act was done maliciously or willfully so as to justify $1.00 punitive damages is clearly a matter for determination by the jury; and not the Court. Hence, judgment notwithstanding verdict against Norman Jungclaus as to false imprisonment must be denied. On practical grounds, a new trial will not be ordered for a potential $1.00 recovery in any event.

Thus, the trial court refused to grant judgment against Norman Jungclaus because any damages awarded would be insignificant. However, plaintiff's complaint sought not only money damages but an injunction against further interference with her freedoms of religion, association, and expression. The value to plaintiff of a judgment in her favor, while not monetary, is nevertheless significant.

The majority opinion finds, in plaintiff's behavior during the remainder of the 16-day period of "deprogramming," a reasonable basis for acquitting defendant Jungclaus of the false imprisonment charge for the initial

three days, during which time he admittedly held plaintiff against her will. Under this theory, plaintiff's "acquiescence" in the later stages of deprogramming operates as consent which "relates back" to the events of the earlier three days, and constitutes a "waiver" of her claims for those days. Cases cited by the majority do not lend support to this proposition. Indeed, *People v. White*, 53 Mich. App. 51, 218 N.W.2d 403 (1974), affirming the defendant's conviction for attempted kidnapping, held that later consent does not relate back to previous acts by defendant. *Id.* at 55-56, 218 N.W.2d at 405. *Schneckloth v. Bustamonte*, 412 U.S. 218 (1973), and *Faniel v. Chesapeake & Potomac Telephone Co.*, 404 A.2d 147 (D.C. 1979), merely miss the mark. *Bustamonte* addressed the meaning of "voluntary consent" to the search of an automobile by police in the context of a challenge based on Fourth Amendment grounds. In *Faniel* the court found that an employee, who was given a ride to her home by company personnel who intended to recover unauthorized electrical equipment, had not proved an absence of lawful consent sufficient to sustain a finding of false imprisonment.

Moreover, *Weiss v. Patrick*, 453 F. Supp. 717 (D.R.I. 1978), does not lend support to the majority's finding. While it is true that in *Weiss* the plaintiff testified that she was forcibly detained against her will, the court found her testimony not credible. *Id.* at 721. The court there found only that parents

> have the right which all citizens have to peaceably dissuade Plaintiff of her particular religious views, provided they use no form of unlawful compulsion

> to effect their purpose. What occurred here was simply an effort, in private, to persuade a willing listener to disavow the tenets of the Unification Church. * * *
>
> * * * * *
>
> It is clear that Plaintiff has the right to be free of any coercive attempt to speak with her * * *.

Id. at 722.

Certainly, parents who disapprove of or disagree with the religious beliefs of their adult offspring are free to exercise their own First Amendment rights in an attempt, by speech and persuasion without physical restraints, to change their adult children's minds. But parents who engage in tortious conduct in their "deprogramming" attempts do so at the risk that the deprogramming will be unsuccessful and the adult children will pursue tort remedies against their parents. To allow parents' "conviction that the judgmental capacity of their [adult] child is impaired [by her religious indoctrination]" to excuse their tortious conduct sets a dangerous precedent.

Here, the evidence clearly supported a verdict against Norman Jungclaus on the false imprisonment claim, and no reasonable basis existed for denying judgment notwithstanding the verdict. The trial court's holding in this regard should be reversed.

The second issue which particularly concerns me was the instruction by the trial court that the jury could consider the fact that The Way paid plaintiff's legal bills in assessing her credibility and awarding damages. I concur with the court's holding that such an instruction is error,

although in the context of this case harmless error. I write to emphasize the compelling reasons why such an instruction should not be given. First, the fact that The Way aided and encouraged plaintiff to bring the lawsuit has little to do with whether the defendants falsely imprisoned the plaintiff or whether they intentionally inflicted emotional distress on her. It is not uncommon for a layperson to talk to others and get advice before bringing a lawsuit. Nor is it uncommon for groups to provide money and other support to its members as they pursue individual causes of action. The contributions of the NAACP, which financially assists litigation aimed at eliminating racial barriers, were recognized, as the majority opinion notes, in *NAACP v. Button*, 371 U.S. 415, 431 (1963). Such aid not only allows a person to exercise his or her right to seek redress through our courts, it also effectuates that fundamental underpinning of our judicial system.

In the instant case, to admit evidence that The Way paid plaintiff's attorneys fees improperly shifted the jury's attention from the nature of defendants' acts to the acceptability of The Way. Such a shift of attention could unduly prejudice plaintiff because she exercised her First Amendment right of association with an unpopular religious group.

Furthermore, that evidence was irrelevant to the motive for her claim for damages. The reason plaintiff altered the amounts of compensation sought from her parents was, according to her testimony, her belief that she had to sue for money. Only after the suit was commenced did she learn that she could sue for legal protection. Plaintiff was entitled to seek compensation from the defendants

individually, all together, or in any combination. Therefore, that she chose to sue her parents for a token amount has little to do with who was paying the legal fees.

The fact that a group or others support a plaintiff and may derive some benefit unrelated to plaintiff's cause of action should not be introduced at trial and considered by the jury as it determines plaintiff's credibility and the amount of damages to be awarded. The ultimate effect can only be to deter plaintiffs and defendants from accepting assistance from groups or causes which may not be popular in our society. This would mean that in suits like the present one, plaintiffs with unpopular beliefs who cannot afford costly legal representation must forgo their rights to seek redress in our courts or utilize the courts at the risk that evidence of support from their minority religious or political groups may be used to undermine all or parts oftheir claims.

Lastly, I would address plaintiff's claim that the trial court erred in denying her motion to amend her complaint or add a new cause of action. I agree that the motion was properly denied because it was untimely, but I would not conclude, as suggested by footnote 4 of the majority opinion, that defendant parents' attempts to "deprogram" their daughter from her religious beliefs did not constitute a violation of her rights under 42 U.S.C. § 1985 (3). Although one federal court has so held, *see Weiss v. Patrick*, 453 F. Supp. 717. 722 (D.R.I.), *aff'd*, 588 F.2d 818 (1st Cir. 1978), *cert. denied*, 442 U.S. 929 (1979), a number of courts have reached the contrary conclusion. In *Augenti v. Cappellini*, 84 F.R.D. 73 (M.D. Pa. 1979), for example, defendants' arguments that their attempts to deprogram their son "were motivated solely by parental

concern * * * to further his physical and mental health" did not persuade the court that the "invidiously discriminatory animus" necessary for a § 1985(3) action was lacking. *Id.* at 78. Several other cases interpreting the legislative history of § 1985(3) have determined that the protection of the provisions does extend to religious groups. *See Jackson v. Associated Hospital Service*, 414 F. Supp. 315 (E.D. Pa. 1976), *aff'd*, 549 F.2d 795 (3rd Cir.), *cert. denied*, 434 U.S. 832 (1977); *Rankin v. Howard*, 457 F. Supp. 70, 74-75 (D. Ariz. 1978); *cf. Mandelkorn v. Patrick*, 359 F. Supp. 692, 697 (D.D.C. 1973). In reaching this conclusion, the court in *Baer v. Baer*, 450 F. Supp. 481 (N.D. Cal. 1978) observed:

> While religious status may differ from racial status because it is not a congenital and inalterable trait, membership in a minority racial group, has often excited the fear, hatred and irrationality of the majority. Two thousand years of human history compellingly prove that no easier road to martyrdom is found than in adherence to an unpopular religious faith. For these reasons, and because the legislative history does not indicate otherwise, this court concludes that religious discrimination may be encompassed by the terms of § 1985(3).

Id. at 491.

OTIS, Justice (dissenting in part).

I join in the views expressed by Justice Wahl, and particularly take issue with a rule which authorizes what is euphemistically described as "limitations upon the adult child's mobility" whenever a parent, or indeed a stranger

acting for a parent, subjectively decides, without the benefit of a professional opinion or judicial intervention, that the adult child's "judgmental capacity" is impaired and that she should be "extricated" from what is deemed to be a religious or pseudo-religious cult.

The rule adopted by the majority states:

> We hold that where parents, or their agents, acting under the conviction that the judgmental capacity of their adult child is impaired, seek to extricate that child from what they reasonable believe to be a religious or pseudo-religious cult, and the child at some juncture assents to the actions in question, limitations upon the child's mobility do not constitute meaningful deprivations of personal liberty sufficient to support a judgment for false imprisonment.

We furnish no guidelines or criteria for what constitutes "impaired judgmental capacity" other than the fact that the adult child has embraced an unorthodox doctrine with a zeal which has given the intervenor cause for alarm, a concern which may be well-founded, ill-founded, or unfounded.

Nor do we specify whether the "cult" must be for a benign or a malevolent purpose. It is enough that the intervenor has reason to believe it is a cult i.e. "an unorthodox system of belief" and that at some juncture during the adult child's involuntary confinement, she "assents," that is to say, yields or surrenders, possibly from exhaustion or fatigue, and possibly for a period only long enough to regain her composure.

If there is any constitutional protection we should be

slow to erode it is the right of serious-minded people, young or old, well-adjusted, or maladjusted, to search for religious or philosophical fulfillment in their own way and in their own time without the interference of meddling friends or relatives, however well-intentioned they may be.

At age 21, a daughter is no longer a child. She is an adult. Susan Peterson was not only an adult in 1976 but she was a bright, well-educated adult. For whatever reason, she was experiencing a period of restlessness and insecurity which is by no means uncommon in students of that age. But to hold that for seeking companionship and identity in a group whose proslyting tactics may well be suspect, she must endure without a remedy the degrading and humiliating treatment she received at the hands of her parents, is, in my opinion, totally at odds with the basic rights of young people to think unorthodox thoughts, join unorthodox groups, and proclaim unorthodox views. I would reverse the denial of recovery as to that cause of action.

APPENDIX B

STATE OF MINNESOTA DISTRICT COURT
County of Hennepin Fourth Judicial District

SUSAN LOUISE PETERSON,

Plaintiff,

vs.

PAUL SORLIEN, NORMAN JUNGCLAUS, MARGARET JUNGCLAUS, KATHY MILLS, VERONICA MORGEL, VALERIE LOVELACE, MICHELE PERKINS, JEAN KRAWETZ, JOHN DOE, JAMES ROE, JANE DOE and MARY ROE,

Defendants.

NOTICE OF MOTION AND MOTION

FILE NO. 727258

TO: PAUL SORLIEN AND HIS ATTORNEY, JEFFREY R. BROOKE, ATTORNEY AT LAW, 300 ROANOKE BUILDING, MINNEAPOLIS, MINNESOTA, 55402:

NORMAN JUNGCLAUS, MARGARET JUNGCLAUS, VALERIE LOVELACE, VERONICA MORGEL AND KATHY MILLS AND THEIR ATTORNEY, JOSEPH W. PARRIS, PARRIS LAW OFFICES, LTD., BOX 676, HECTOR, MINNESOTA, 55342:

MICHELE PERKINS AND HER ATTORNEY, MARK S. WASSERMAN, ATTORNEY AT

LAW, SUITE 736, NICOLLET MALL BUILDING, 512 NICOLLET AVENUE, MINNEAPOLIS, MINNESOTA, 55402:

PLEASE TAKE NOTICE that on November 14, 1977 at 9:30 A.M. or as soon therafter as counsel can be heard, before The Honorable Bruce C. Stone, Judge of District Court, Fourth Judicial District, in the City of Minneapolis, County of Hennepin, Government Center, State of Minnesota, plaintiff will move the court for an order as follows:

1. Excluding during the pendency of trial, all statements by counsel and witnesses which are calculated to prejudice and inflame the jury, such as: "cult", "religious cults", "Moonies", and "brainwashing."

2. Excluding during the pendency of trial, all statements by counsel and witnesses concerning the source of plaintiff's counsel's attorneys fees on the gorunds such evidence is irrelevant and invades the attorney-client privilege.

3. Excluding during the pendency of trial, all statements by counsel and witnesses concerning plaintiff's abortion on the grounds that such evidence is irrelevant and an invasion of plaintiff's constitutional rights.

These motions are based on all of the depositions, files, records, affidavits, and argument of counsel.

Dated: Nov. 9, 1977

DOYLE & RANUM
By: /s/ JAMES H. RANUM
Attorney for Plaintiff
Suite 100
605 Fourth Avenue South
Minneapolis, MN 55415
[612] 339-0924

No. 80-1370

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1980

SUSAN LOUISE PETERSON,

Petitioner,

vs.

PAUL SORLIEN, NORMAN JUNGCLAUS, MARGARET JUNGCLAUS, KATHY MILLS, VERONICA MORGEL, and MICHELE PERKINS,

Respondents

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF MINNESOTA

BRIEF OF RESPONDENT PAUL SORLIEN IN OPPOSITION

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No. 80-1370

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1980

SUSAN LOUISE PETERSON,

Petitioner,

vs.

PAUL SORLIEN, NORMAN JUNGCLAUS, MARGARET JUNGCLAUS, KATHY MILLS, VERONICA MORGEL, and MICHELE PERKINS,

Respondents.

OPINION BELOW

The opinion of the Minnesota Supreme Court, No. 266 (1979) is reported at 299 N.W.2d 123 (Minn. 1980).

STATUTES INVOLVED

28 United States Code § 1257. State courts; appeal; certiorari.

Final judgments or decrees rendered by the highest court of a state

in which a decision could be had, may be reviewed by the Supreme Court as follows:

. . . .

(3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States.

. . . .

ARGUMENT

PETITIONER HAS FAILED TO ESTABLISH THE JURISDICTIONAL REQUIREMENTS FOR THE COURT TO ISSUE A WRIT OF CERTIORARI.

United States Supreme Court review by writ of certiorari of final judgments rendered by state courts is limited by statute to cases where "any title, right,

privilege or immunity is specially set up or claimed under the Constitution." 28 U.S.C. 1257(3) (1970). Timely and proper presentation of federal questions in state court proceedings is a jurisdictional condition precedent to review both by rule of court and prior decision. Rule 21(h), Rules of the Supreme Court of The United States (1980); Street v. State of New York, 394 U.S. 576, 582, 89 S. Ct. 1354, 22 L. Ed. 2d 572 (1969), Fuller v. State of Oregon, 417 U.S. 40, 50 n. 11, 94 S. Ct. 2116, 40 L. Ed. 2d 642 (1974). Without exception, the federal constitutional questions presented by the petition for review (Petition, p. i) are being raised for the first time before this Court, and neither the trial court nor the Minnesota

Supreme Court had an opportunity to consider Petitioner's present claims.[1]

The first question advanced by Petitioner for review, whether the false imprisonment and attempted deprogramming by parents of their adult daughter violates the daughter's First and Fourteenth Amendment rights, bears no resemblance to the issues litigated in state court. Petitioner's initial Complaint in this action sets forth two non-federal common law tort claims: false imprisonment and intentional infliction of emotional distress. Petitioner's own statement of the issues raised on appeal to the Minnesota

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[1]The sole constitutional issue raised on Petitioner's appeal to the Minnesota Supreme Court was the trial court's admission of evidence of the organization and of certain practices of the religious group of which Petitioner was a member. That issue is not among the questions presented to this Court by Petitioner for review. (Petition, p. i.)

Supreme Court reveals the absence of the First and Fourteenth Amendment violations now claimed to have arisen out of defendants' conduct. (Petition, p. 4.)

Petitioner belatedly moved to amend the Complaint to assert a federal cause of action arising under Title 42, United States Code § 1985(3) involving an alleged private conspiracy among the defendants to deprive Petitioner of her civil rights. However, the trial court and Minnesota Supreme Court found that under state procedural rules the proposed amendment to the Complaint was not timely and was properly disallowed. (Opinion, Petition, A-19; 299 N.W.2d 132-133. Dissenting Justices Wahl and Otis concurred on that issue. Opinion, Petition, A-26; 299 N.W.2d 135-136.)

Questions Two and Three raised by Petitioner set forth constitutional claims

which only arise (if at all) as a consequence of the decision of the Minnesota Supreme Court, rather than as claims fairly presented to and decided by that Court. Petitioner now claims that the Minnesota Supreme Court's ruling constitutes state action and constitutes a deprivation of her property (her cause of action) without due process of law under the Fourteenth Amendment. Similarly, Petitioner claims that the Court's analysis employed an improper classification and created a suspect class on the basis of religion in violation of the Equal Protection Clause of the Fourteenth Amendment. (Petition, p. i.)

Petitioner's statement of each question demonstrates that she seeks not review of litigated constitutional questions resting upon a complete record of proceedings below, but rather review of

issues raised for the first time by petition for a writ of certiorari from this Court. In view of the well established rule that certiorari will not be granted where a federal constitutional issue is raised for the first time on review of a state court decision, the petition must be denied. Moore v. Illinois, 408 U.S. 786, 799, 92 S. Ct. 2562, 33 L. Ed. 2d 706 (1972); Cardinale v. Louisiana, 394 U.S. 437, 438, 89 S. Ct. 1161, 29 L. Ed. 2d 398 (1969); Estate of Wilson v. Aiken Industries, Inc., mem. dec., Blackmun, J., concurring, 439 U.S. 877, 99 S. Ct. 216, 366, 58 L. Ed. 2d 191 (1978).

Petitioner had the opportunity under Rule 140 of the Minnesota Rules of Civil Appellate Procedure to raise the Fourteenth Amendment claims if they arose from an unanticipated ruling of the Minnesota Supreme Court. Estate of Wilson v. Aiken Industries, Inc., supra; Herndon v.

Georgia, 295 U.S. 441, 443-444, 55 S. Ct. 794, 79 L. Ed. 1530 (1935). However, Petitioner did not elect to petition the Minnesota Supreme Court for a rehearing.[2]

Although Petitioner objected to admission of evidence that Petitioner's religious group participated in the expenses of litigation, no constitutional claim was made to the trial court. (Transcript, 14-17, 205, 227, 834-849.)

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[2]Even if the jurisdictional threshold were satisfied, there is an ample non-federal basis for the judgment on the false imprisonment claim against at least three of the defendants. The trial court determined that the evidence against Respondent Sorlien was insufficient as a matter of law. That ruling was obviously made (and approved by the Minnesota Supreme Court) without reference to the rule subsequently announced on appeal. Similarly, Petitioner sought only nominal damages from her parents, Respondents Norman and Margaret Jungclaus. The Minnesota Supreme Court will not reverse a judgment on appeal merely to allow a plaintiff to recover nominal damages. (Petition, A-12, n. 1; 299 N.W.2d 129, n. 1.)

Rather, Petitioner contended that such evidence was irrelevant and invaded the attorney-client privilege. (Petition, A-31.) Similarly, although Petitioner contended on appeal that the admission of such evidence constituted fundamental error, Petitioner did not claim that the trial court's action violated her First Amendment rights. The Minnesota Supreme Court concluded that the receipt of such evidence was error and declined to sanction an instruction that such evidence could be considered on the issue of damages. In view of the record and the ruling, the issue is extremely unlikely to recur in other litigation and hardly presents a substantial federal question warranting review by this Court.

Finally, Petitioner contends that the few courts dealing with facts involving a "deprogramming" have reached divergent

opinions and that this Court should adopt a "standard" in such matters. (Petition, p. 8.) Cases cited by Petitioner (Petition, p. 8) represent divergent claims brought on the basis of widely varying facts. Because of these differences in both principle and fact, adoption of a constitutional rule delineating the point at which parents or others may intervene and confront a person involved in a high pressure-high intensity group would be impossible. Clearly the record in this case presents no opportunity for the bold pronouncement requested by Petitioner.

CONCLUSION

Respondent Sorlien respectfully submits that the Petition for Certiorari

should be denied for all questions raised by Petitioner.

Respectfully submitted,

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